IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 469 OF 2003

Aryan Education Society & anr. ... Petitioner

Vs.

Smt. Lavate Iravati Narayanji &
3 Ors. ... Respondents

None for Petitioner.

Mr. A.S. Parulekar i/by Parulekar & Associates
for Respondent No. 1.

Mr. P.M. Mokashi, A.G.P. for Respondnet ;Nos.
2, 3 and 4.

CORAM : F.I. REBELLO,J.
DATED : SEPTEMBER 30, 2004

P.C.

1. The Petitioners were respondents in the application moved under the Payment of Gratuity Act, 1972. The Petitioners raised a preliminary objection that the tribunal had no jurisdiction to decide the said application on the ground that Respondent No. 1 herein is not workman under the definition of Payment of Gratuity Act, 1972. That objection was rejected and application filed by the Respondent was allowed and direction was issued to the Petitioners herein to pay the sum of Rs.1,27,510/- within the period of one month. Respondent No. 1 preferred an application purported to be under Rule 11(5) and also contended considering that the order dated 11.6.2002 being exparte order that should be reviewed.

2. That was dismissed by order of 13.10.2002. An

appeal came to be preferred. However, the amount required to be deposited while preferring the appeal was not deposited. The Petitioner was therefore, informed by letter dated 14.1.2003 that unless the amount as required was deposited, the appeal could not be registered. Thereafter show cause notice came to be issued on 6.1.2003. The Petitioner thereafter filed present petition challenging various orders as set out in Prayer Clause (b). At the time of hearing none present for the Petitioner. On behalf of the Respondent NO. 1 their learned counsel contends that the petition should be dismissed on that count and further also as the amount as required was not deposited in the appeal, this court should not entertain the present petition.

3. There is no dispute that Respondent ;No. 1 school teacher and has been paid the gratuity and other terminal benefits in terms of the service rules as applicable. The application of the provisions to the teacher has been; considered by the Apex Court in the case of Ahmedabad Prima Teachers Association Vs. Administrative Officer, 2004(1) CLR 495. The Apex Court has held that the teachers are not covered by the definition of employee under the Payment of Gratuity Act.

4. Considering the law declared by the Apex Court, even in the absence of the petitioner or their

counsel or the dismissal of the appeal on the ground of non deposit, in my opinion this will be a fit case that this court should exercise its supervisory jurisdiction. The Petitioner society is running a recognised school which is entitled to grants. Consequently petitioner if the order is not interfered with would be entitled to claim moneys from public funds which otherwise Respondent No. 1 is not entitled to receive, apart from the fact that in law she is not so entitled.

5. Considering the judgement of Ahmedabad Primary Teachers Association (supra) in my opinion, the petition will have to be allowed. In the light of that petition made absolute in terms of Prayer Clause (b). No order as to costs.

(F.I. REBELLO,J.)